

Office of the Presiding Officer
Military Commission

September 14, 2005

SUBJECT: Presiding Officers Memorandum (POM) # 2-2 Appointment and Role of the Assistant to the Presiding Officers

This POM supersedes POM # 2-1, dated September 16, 2004

1. Pursuant to Military Commission Order No. 1, and Military Commission Instruction No. 6, an Assistant to the Presiding Officers has been detailed and shall report to the Presiding Officer and work under his supervision to provide advice in the performance of the Presiding Officer's adjudicative and administrative functions. The Assistant may act on behalf of the Presiding Officer. The Assistant does not act, and does not have authority to act, on any matter or in any manner, on behalf of the Appointing Authority. (See Appointing Authority Memorandum, SUBJECT Reporting Relationships and Authority of the Assistant to the Presiding Officer, Military Commissions, 19 Aug 2004 - Enclosure 1.)

2. The current Assistant to the Presiding Officers is Mr. Keith Hodges who has been detailed by the Department of Homeland Security. The Assistant to the Presiding Officers is also referred to as the Commission Trial Clerk. His duties are:

a. Serve as an attorney-assistant providing all necessary support to the Presiding Officers of Military Commissions in a broad array of legal issues, to include functional responsibility for legal and other advice on substantive legal, procedural, logistical, and administrative matters and services to the Presiding Officers, Military Commissions.

b. Responsible for handling significant, complex matters assigned by the Presiding Officers of the Military Commissions, which may require legal or other analysis of substantive legal, procedural, logistical, and administrative matters outside of normally assigned areas of responsibility.

c. Work under the supervision of the Presiding Officers, to include providing advice to the Presiding Officers in connection with their performance of adjudicative functions, *ex parte* if required, with respect to substantive legal, administrative, logistical, and procedural matters. (See ABA Model Code of Judicial Conduct Canon 3B(7)).

d. Act on the Presiding Officer's behalf to make logistical and administrative arrangements.

e. Draft, coordinate, staff, and publish guidelines for Commission Proceedings to include Presiding Officer Memoranda (POM). (POMs must be personally approved by the Presiding Officer.)

f. Process and manage policy, procedure, and similar actions and activities designed to contribute to the efficient operation of the Commission - both current and future operations.

g. Coordinate the integration of operations that affect in-court proceedings with OMC and JTF, Guantanamo Bay, and other support personnel - to include the bailiff, security personnel, and court reporters - in providing services to the Commission.

h. To sign FOR THE PRESIDING OFFICER, or send emails in that capacity, concerning any matter that the Presiding Officer could direct, or does direct, except those that under Commission Law or a POM can only be performed personally by the Presiding Officer.

i. Other duties not listed above which are consistent with improving the processes, procedures, administration, and logistics of the Office of the Presiding Officer and the Commissions and which are not inconsistent with paragraph 3 below.

3. The Assistant is *not* authorized to:

a. Communicate or discuss any matter with any Commission member or alternate member (except the Presiding Officer) other than to arrange for their administrative and logistical needs.

b. Be present during any closed conference or session of the members.

c. Advise the Presiding Officer concerning the decision on any matter that requires the vote of the entire Commission, including the Presiding Officer; however, the Assistant may prepare any documents and drafts necessary or required to *process, record, and disseminate* any decision by the Commission.

d. Provide any substantive advice to the Presiding Officer on any matter that, at the time the substantive advice would be offered, requires a vote or decision by the entire Commission, including the Presiding Officer.

4. Except as approved in advance in writing by the Presiding Officer, Mr. Hodges is not permitted to perform any duties for the Department of Homeland Security that involve: advice to law enforcement concerning an active case or investigation; advice on how to detect, investigate, or prosecute alleged acts of terrorism or violations of international law; or any other matter that would create a perception in the minds of a reasonable person that the Assistant's home agency (Department of Homeland Security) has any part in the Commission process through the actions of the Assistant.

5. **Any** email which is sent to the Presiding Officer will be CC to the Assistant to the Presiding Officers. If counsel believe there is a legal reason not to CC the Assistant to the Presiding Officers, counsel shall include that reason in the email to the Presiding Officer.

Signed by:

Peter E. Brownback III
COL, JA, USA
Presiding Officer

1 Enclosure
As stated

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WASHINGTON, DC 20301-1640

APPOINTING AUTHORITY FOR
MILITARY COMMISSIONS

19 August, 2004

MEMORANDUM FOR Presiding Officer, Colonel Peter Brownback

SUBJECT: Reporting Relationships and Authority of the Assistant to the Presiding Officer, Military Commissions

This memorandum sets forth the reporting relationships and levels of authority for persons assigned as Assistant to the Presiding Officer.

Pursuant to Section 4(D), Military Commission Order No. 1 and Paragraph 3(B)(11), Military Commission Instruction No. 6, an Assistant to the Presiding Officer shall report to the Presiding Officer. The Assistant to the Presiding Officer will work under the supervision of the Presiding Officer and provide advice in the performance of the Presiding Officer's adjudicative functions. The Assistant to the Presiding Officer will act on behalf of the Presiding Officer.

The Assistant to the Presiding Officer does not act, and does not have authority to act, on any manner on behalf of the Appointing Authority.

A handwritten signature in black ink, reading "John D. Altenburg, Jr.", is positioned above the printed name.

John D. Altenburg, Jr.
Appointing Authority
for Military Commissions

cc: Chief Prosecutor
Chief Defense Counsel

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